1924.

Department of Revenue

OFFICE Board of Revenue L.R. & Sett.

STATION Madras

Mis **No.** 1050

Dated 5 5 24

To whom sent		Date	Initials
	Given for copying		
	Copied		
	Examined		
	Signed		
	Given for despatch		
	Despatched	5/5/24	
	Indexed		
Pages in the file	To be destroyed on		

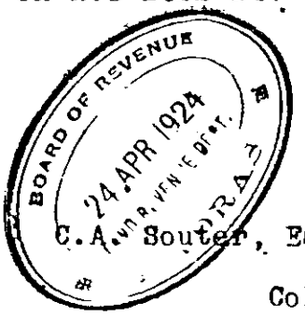
(SUBJECT.)

Suits (S Kanara, Udipi D-n
- O.S no 30/24 - Shiroor Village
S no 117- Assignment - Defe
Sanctn of

* Not to be filled in the case of permanent records.

Ref. on A.3-1022-24.

South Kanara Collector's Office,
Camp Sullya, 16th April 1924.



From

C.A. Souter, Esquire, I.C.S.,
Collector of South Kanara.

To

The Secretary to the Board,
Land Revenue, Madras.

Sir,

Suit - Udipi - District Munsif's Court - O.S.1924-30.

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I request the sanction of the Board to defend the above suit. It has been filed by Shri Vishvendra Thirtha Swamier, representing Sri Vedavyasa Bhuvaraha Hayagriva Devaru of Sri Sode Mutt of Udipi for a declaration that S.No.117/1 of Shirva village belongs to the Mutt warg (holding) or is the property of the Plaintiff, -- that the assignment of the same in favour of Venkatakrishna Bhatta alias Mithintaya, the 1st Defendant, is ultra vires and for other consequential reliefs.

2. The darkhast enquiry relating to the plot in question was instituted as ordered by the Board in its proceedings No.618 Mis., dated 21st May 1920. The Plaintiff did not put forward - his warg claim even at this stage, but based his claim to have it assigned to him on ragti (adjacency) and enjoyment right. The Revenue ---- Inspector reported that the plot formed kumaki to the 1st Defendant and that the Plaintiff's claim of enjoyment was groundless. The Tahsildar accordingly assigned it (p 18 of (8)) to the 1st Defendant on 23rd April 1921. The Plaintiff then appealed to the Divisional Officer on the ground that the plot was the continuation of a hadi conserved by him, that it was in his enjoyment, and that it ---- contained water-courses which irrigated his lands and a shrine -- worshipped by his tenants. The Divisional Officer, however, on the report of the Revenue Inspector found against the Plaintiff

on all these points and dismissed the appeal

3. The Plaintiff then sent a suit notice to the Collector advancing a warg (ಕೊರ್ತ) claim for the first time. He contended that the plot was included in the boundaries mentioned in the sale deed executed in his favour on 9th March 1820. The Tahsildar after personal inspection reported that the boundaries were vague and indefinite and that the warg claim could not be admitted. As regards enjoyment, the Tahsildar's report showed that the plot was in the enjoyment of the Plaintiff rather than in that of the Counter-petitioner. Though the Plaintiff's claim was barred by Limitation under the Madras High Court Judgment in S.A.No.2048/1914, as he did not claim the plot in his objection petition to the Settlement Officer, Mr. Rajachar after hearing both the parties remanded the case for a personal inspection by the Divisional Officer. The Divisional Officer having reported that only a small portion (76 cents) of the plot formed part of the Plaintiff conserved hadi in S.No.117/2, Mr. Wells thought that there were no sufficient grounds for interference especially in view of the fact that the northern portion of the plot fell within the kumaki limits of the 1st Defendant and that the kumaki claims of the Plaintiff had been withdrawn. Hence the present suit.

4. The Government Pleader, Mangalore is of opinion that the Government have good grounds for contesting the Plaintiff's claim both on questions of law as well as fact. I agree with him.

5. I propose to file the following:-

(i) Plaintiff's petition dated 21st October 1913 submitted in reply to the notice served on him asking him to show cause why his kumaki privileges should not be forfeited for illicit cutting of trees in the plaint plot. He admits in this petition that he exercises kumaki privileges over the plot.

(ii) Plaintiff's statement dated 19th September 1917 asking for the assignment of the plot on the ground of kumaki.

(iii) Plaintiff's statement dated 19th September 1917 agreeing to pay compounding fees in respect of the trees removed from the plot. In this he admits that the plot is lagti and kumaki

to his Mutt property.

(iv) Plaintiff's statement dated 18th December 1920 at the fresh darkhast enquiry claiming the plot as kumaki.

(v) Plaintiff's appeal memo. to the Divisional Officer.

(vi) Plaintiff's objection petition to the Settlement ----- Officer.

(vii) Extract from the Settlement diglott Register relating to the plaint plot to show that it was classed as Government ---- assessed waste.

6. The written statement prepared by the Vakil doing ----- Government work at Udipi and slightly amended by the Government - Pleader, Mangalore is enclosed for the Board's approval together with the records noted in the -- margin.

1. Copy of plaint.
2. Copy of Mangalore Government Pleader's letter dated 14.4.1924.
3. Dis. file 630 R/Rev.14 dated 11.11.1914 of this office.
4. Dis. file 5163-22 R dated 16.4.1923 of this office.
5. Udipi Taluk office records of D.R.1039/1326 and 61/1330.
6. O.P.R.No.10/1904 (2 petitions relating to rough pattas Nos.11 and 25).

7. The - notice of suit was served on me on 28th January 1924. The suit stands posted to 29th April 1924 for hearing. As the Court, --- however, closes for the midsummer recess on 26th April 1924, the statement has to be filed on the re-opening day i.e. 9th June 1924.

Your obedient servant,

For Collector.

M.S.R./19.4.24.

19.4.24

19.4.24

In the Court of the District Munsif of Udipi.

O.S.No.30/1924..

Between

Sri Vishvendra thirtha Swamier, representing Sri Vedavyasa Bhuvaraha, Hayagriva Devaru of Sri Sode Mutt of Udipi — Plaintiff

and

Venkatakrishna Mithirthaya and another. — Defendants.

Written statement of the Right Honourable the ------- Secretary of State for India in Council represented by the - Collector of South Kanara, Mangalore, 2nd defendant in this suit.

Under Order VIII, Rule 1 of ~~Criminal~~ Civil Procedure Code.

The 2nd Defendant, abovenamed begs to state as ------ follows:-

1. That the address of the 2nd Defendant is as stated in the plaint.

2. That the suit of the Plaintiff is frivolous and is not maintainable at law and on merits.

3. That this Defendant denies that the plaint properties appertain to the muli or proprietary right or title of the plaint Mutt and that they are comprised in the sale-deed referred to in the plaint.

4. That this Defendant also denies that ever since -- the date of the alleged sale the plaint Mutt has been in --- open, exclusive and continuous possession and enjoyment of - the suit plots either directly or through its tenants. This Defendant further denies that the suit plots are now in the possession of the Plaintiff.

5. Even such possession as Plaintiff might have had which this Defendant does not admit, was at best permissive and is not sufficient to enable the plaint Mutt to assert -- or acquire, title to the plaint properties in any manner

6. That this Defendant denies the genuineness of the sale-deed relied upon by the Plaintiff. Further this ----- Defendant denies that the plaint properties are included in

the said sale-deed, which even if so, is not binding on Government.

7. That this Defendant submits that the land being Government property Plaintiff cannot question the ------- darkhast grant of the suit plots to the 1st Defendant; the said grants are not beyond the legal competence of the 2nd Defendant.

8. That the plaint-impeached-assignments are ----- perfectly valid and confer a valid title on the 1st ----- Defendant in respect of the plaint properties which this Defendant submits are now lawfully in the possession of - the 1st Defendant.

9. That Plaintiffs suit for declaration, injunction and the other reliefs claimed, are barred by the statute of limitation.

10. Plaintiff having contended in the plaint ------ mentioned darkhast proceedings that plaint properties are kumaki to his kadim lands is now estopped from setting up a warg claim to the same.

11. That the suit of the Plaintiff for confirmation of possession of suit plots or in the alternative for --- possession thereof is not maintainable at law. That --- Plaintiff has not been in actual possession of the suit - plots at any time during the statutory period preceding date of suit. Hence this suit in ejectment or for ----- confirmation of possession is not maintainable at law

12. That the Court fees paid by the Plaintiff is -- not correct.

13. That the suit plots have been Government waste lands and have been validly assigned by the 2nd to the -- 1st Defendant and the said assignment cannot be questioned by the Plaintiff. That the kumaki privileges of the Plaintiff, if any, over the suit plot or any portion ---- thereof were withdrawn by the Collector of South Kanara - in Dis.No.630 R/Rev.14 dated 11th October November 1914.

14. That the Plaintiff is not entitled to recover

any of the suit reliefs from either of the Defendants.

15. That this Defendant denies the truth of the other allegations contained in the plaint not expressly traversed herein, in so far as they are against the Defendants.

16. This Defendant in conclusion, denies Plaintiffs suit, in toto, and prays that the same may be dismissed --- with this Defendants' costs

/True Copy/

For Collector.

M.D'S.15/4.

In the Court of the District Munsif of Udipi.

O.S.No.30/1924.

Between

Sri Vishvendra Thirtha Swamier Representing Sri Vedavyasa Bhuvaraha Hayagriva Devaru of Sri Sode Mutt of Udipi — Plaintiff

and

1. Venkatkrishna Bhatta alias Mithinthaya
2. The Secretary of State for India in Council - Represented by the Collector of South Kanara. — Defendants.

Plaint under section 26, Border VII, Rule 1 of Act V of 1908.

The Plaintiff abovenamed begs to state as follows:-

I. That Plaintiff Sri Vishvendra Thirtha Swamier is disciple of Sri Vishadhisha Thirtha Swamier of Sri Sode Mutt of Udipi residing in Udipi Town. Plaintiff sues as ------ representing Sri Vedavyasa Bhuvaraha Hayagriva Devaru of the said Mutt. — Plaintiff

Process on Plaintiff may be served to the above ---- address.

II That 1st Defendant Venkatkrishna Bhatta alias Mithinthaya is son of Srinivasa Mithinthaya, Shivalli Brahmin, residing in Innanje village, Udipi Taluk. The 2nd Defendant is the Secretary of State for India in Council, represented by the -------- Collector of South Kanara, Mangalore. — Defendants.

III. Subject-matter of the suit.

1 The immoveable properties specified herebelow ---- appertain to the muli or proprietary right of the plaint ---

Mutt, being comprised in a sale-deed executed by one ----- Padmale Mainda Shetty and another in favour of the said Mutt on 9th March 1820.

2. That ever since the date of the said sale the -- plaint Mutt has been in open exclusive and continuous --- possession in its own right through its tenants.

That in or about 1916, the Tahsildar of Udipi -- commenced Darkhast Proceedings wherein he assigned the --- said properties to the 1st Defendant. Even in the ------ fresh proceedings instituted in respect of the same plot - after the cancellation of the said assignment by the ----- Board of Revenue the 1st Defendant succeeded in obtaining the assignment from the Tahsildar which was confirmed by - the Revenue Divisional Officer.

4. That against the order passed in favour of the - 1st Defendant by the Revenue Divisional Officer of ------- Coondapoor, the Plaintiff preferred a Revision Petition -- dated 10th August 1922, wherein after the discovery of the sale deed referred to above the Plaintiff advanced his --- warg claim.

5. That the District Collector was pleased to reject the said Petition

6. That the 2nd Defendant had absolutely no right to assign the said plot to the 1st Defendant ignoring the title vesting in Plaintiff by virtue of the said sale.

7. That the said assignment in favour of the 1st Defendant was beyond the legal competence of the 2nd ----- Defendant or his Subordinates and cannot confer any sort of title on the 1st Defendant as against the Plaintiff.

8. That the right to the said plot is further ----- prescribed for by the Plaintiff by being in possession for nearly twice the statutory period even as against the ---- 2nd Defendant.

9. The 1st Defendant on the strength of the said -- assignment is threat~~ing~~en to take forcible possession of the plot from the Plaintiff

10. That in these circumstances the Plaintiff is ---

entitled to a declaration that the plaint Mutt owns and ---- possesses the said properties in its muli or warg right, ---- that the assignment on darkhast thereof in favour of the ---- 1st Defendant was ultra vires of the 2nd Defendant and for a permanent injunction restraining the 1st Defendant from ----- interfering with Plaintiff's possession on the basis of the grant in his favour.

11. That the notice required by section 80 of the ----- Civil Procedure Code has been given to the 2nd Defendant by Plaintiff in the petition to the Collector of South Kanara of 10th August 1922. The notice has been recorded.

12. In case the 1st Defendant asserts possession of --- the plaint property in himself on the strength of the ------- assignment aforesaid or enters into possession, he is liable to be evicted and Plaintiff is entitled to recover possession in this suit.

13. As Plaintiff failed to obtain redress from the ---- 2nd Defendant, he is constrained to launch this suit for the necessary reliefs.

14. The cause of action for this suit arose on or ---- about 16th April 1923 at Shirva Village within the local --- limits of this Court.

IV Plaintiff estimates the value of the reliefs ------ claimed in this suit at Rs.140/- for purposes of court fees and jurisdiction.

V. Prays therefore for judgment and decree against --- the Defendants for the following reliefs:-

(a) Declaring that the under-mentioned immoveable properties appertain to the muli or warg or proprietary right of the Plaintiff, that the assignment of the same in favour of the 1st Defendant is ultra vires of the 2nd Defendant that the same are in the possession of the Plaintiff This relief is not valued as the consequential relief is paid for 0- 0- 0

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(b) Restraining the 1st Defendant from interfering in any manner with Plaintiff's possession on the footing of the assignment in his favour by the 2nd Defendant. This relief is valued at Rs.140.	
and in the alternative.	
In case 1st Defendant enters into ------- possession or asserts possession of the said --- properties he may be directed to deliver ------ possession of the same to the Plaintiff. This relief is valued at Rs.61-4-0 being 10 times the assessment of the suit properties, assessment -- being Rs.6-2-0. The Court fee on this relief is not paid as that on the higher of the ------- alternative reliefs is paid.	0- 0- 0
(c) Granting Plaintiff the costs of this suit with interest.	0- 0- 0
(d) Granting Plaintiff such other and --- further reliefs as the Court may deem fit under the circumstances of this case.	0- 0- 0
	140- 0- 0

Description of the plaint properties.
(including Kes 12)

Plots S. No. 117 measuring Acres 8.19 and paying an assessment of Rs 6-2-0 of Shirva Village, Udipi Sub District South Kanara registration District.

Dated 4th January 1924.

We, Sri Vishvendra Thirtha Swamier, abovenamed ------ Plaintiff do hereby declare that the facts stated above are true to our information and belief.

Dated 4th January ~~9124~~ 1924 at Udipi.

List of documents relied on by Plaintiff.

1. Sale deed by Padumale Mainda Shetty and another in favour of the plaint Mutt

2. Certified copy of the partition deed in the family of 1st Defendant	9- 6-1881.
3. Original of -do-	-do-
4. Certified copy of Tahsildar's order & in D.R.E.No.61/1330.	23- 4-1921.
5. of the Revenue Divisional Officer's order in R.A.No.7/1922.	11- 2-1922.
6. Plan prepared on Plaintiff's behalf for the Revision petition submitted to the Collector.	-------
7. Reports made by the several Tahsildars and Revenue Divisional Officers in the darkhast proceedings relating to the suit properties.	------
8. Notice sent by Plaintiff to 2nd Defendant.	10- 8-1922.
9. Draft of -do-	-do-
10. Order passed on the said notice.	16- 4-1923.

No.3 to be got from 1st Defendant. Nos.7 & 8 to be got from 2nd Defendant. Nos.2,4,to 6,9 & 10 will be ------- produced later on. No.1 is filed herewith.

Dated 4th January 1924. Sd/

Vakil for Plaintiff.

/True Copy/

For Collector.

19.4.24

M.D'S.19/4.

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Letter-from A. J. Lobo, Esquire, B.A., B.L., Government Pleader, Mangalore.
To-the Collector of South Kanara.
Dated-Mangalore, 14th April 1924.
No.- G.P. 71/24

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Reference:- Suit - Udipi District Munsif's Court - O.S.30 of 1924.

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In returning herewith the draft written statement -- prepared by the Vakil appearing for Government at Udipi, I have the honour to state that the same may be accepted with the corrections made by me therein. On the merits it ---- would appear that the Plaintiff's Mutt has been all along in the enjoyment of the plaint plot 117/1; but this ------ possession must be considered at best to be only permissive and not adverse to the rights of Government. If the ----- Plaintiff had any real title to the land he should have put forward his warg claim at the time of Survey and Settlement. It is too late for him to assert any such claim at present, and the suit must fail on the ground of limitation. Besides, Plaintiff has not succeeded in proving that the suit plot is included in the sale-deed of 1820. The boundaries as set forth in this document are too vague to be of any use to --- Plaintiff. The boundary stones referred to in the sale-deed are not now forthcoming. If Vanamudra stones were --- really meant to serve as boundaries as contended by Plaintiff they would have been specifically mentioned as such when --- specifying the boundaries in the document. On the whole --- I am of opinion that Government has good grounds for ------- contesting the Plaintiff's claim. The papers sent to me are returned herewith.

For Collector.

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19.4.24

M.D'S.19/4.

Hq. 9.6.24

Suit (S Kanara) - Udipi Dn
O.S. no 309-24 - Shirva
village - S no 117-1 - Assign
ment - Defence saved?

M-1
S
A.S.

A 2083/24 ——— Q

Advt. 3/V

(Res. nis) 1050/5-5-24

The Board sanctions the
defence of the suit and approve
pps 6 to 7 cf the draft written statement
subject to the allegation
that the date "11th October 1914
p 6 cf. in para 13 of the W.S stands
be altered into "11th November 1914

Hq 30/4/24 gln 30.4.24

3/5/24

Issue 9.5.24 gln

To the Collr of
Skanara with
records by
regd post—